



POLICE DEPARTMENT

December 15, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Bryan Pocalyko
Tax Registry No. 935525
52 Precinct
Disciplinary Case No. 2013-10149

The above-named member of the Department appeared before me on June 30, 2014, charged with the following:

1. Said Sergeant Bryan Pocalyko, on or about May 16, 2012, at approximately 0330 hours while assigned to the 52nd Precinct and on duty in the vicinity of [REDACTED] the (sic) 52nd Precinct, Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police department (sic), in that he searched Person A's (sic) vehicle without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT -- PROHIBITED CONDUCT

2. Said Sergeant Bryan Pocalyko, on or about May 16, 2012, at approximately 0400 hours while assigned to the 52nd Precinct and on duty, in the vicinity of the 52nd Precinct, [REDACTED], Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police department (sic), in that he searched Person A's (sic) vehicle without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Raasheja Page, Esq., Respondent was represented by John D'Alessandro, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1. Respondent is found Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on May 16, 2012, at about 0330 hours, Respondent was on duty, assigned to the 52 Precinct, in uniform, inside a marked Department van, supervising a Midnight Conditions Team consisting of three uniformed police officers. As they were patrolling in the vicinity of [REDACTED], the Bronx, they received a radio transmission that shots had just been fired in the vicinity [REDACTED], only blocks away from where the team was patrolling, and that a car had sped away from the scene of the shooting.

CCRB's Case

CCRB offered the statement of Person A.¹

Person A

At a recorded interview conducted at CCRB on July 23, 2012 [CCRB Exhibit (CCRBX) 1], Person A stated that on May 16, 2012 at 0330 hours, he was driving a [REDACTED] (the car) that he had rented. He was driving in the vicinity of [REDACTED], the Bronx, because he was going to visit a friend at his residence. He pulled the car over to the curb and parked. The body of the car was slightly over a white line which demarcated a pedestrian walkway. He observed a police van bearing license plate number [REDACTED] which drove around the block and then pulled up alongside the car. Person A waited inside the car to see if the officers inside the van were going to get out and speak to him about the fact that the car was sticking out over the pedestrian line.

After waiting three or four minutes, Person A got out of the car and started to walk toward his friend's residence. The police officer who was seated in the driver's seat of the van asked Person A where he was going. Person A asked why he was being stopped. He was told that he had parked his car over the pedestrian line. Person A responded that he

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The CCRB attorney stated that Person A promised to appear, but failed to appear, for pretrial prep sessions on June 16, 2014 and June 25, 2014. The CCRB attorney then had a process server go to Person A's residence on June 26, 2014 to serve him with a subpoena directing him to appear to testify at this trial. The process server informed Person A's mother of the subpoena. On June 27, 2014, the process server spoke on the telephone with Person A who acknowledged that he would meet the process server to pick up the subpoena but then failed to do so. On June 28, 2014, there was a third unsuccessful attempt by the process server. Since Person A failed to appear in the Trial Room to testify on June 30, 2014, the CCRB attorney offered his CCRB interview into evidence.

knew his car was slightly over the line and that this was the reason he had waited to see if the officers were going to say anything about it before he got out of his car. Person A asked the officers whether they wanted him to move his car, but he received no response. When he got back into his car in order to move it, four police officers got out of the van and approached him.

Respondent and Officers Gannon and Brito walked over to the driver's side of the car. The driver's side window was slightly open and through the window they told him that they had stopped him because a shooting or a robbery had occurred in the area by [REDACTED]. Respondent asked Person A to step out of the car. Person A asked why he had to get out of the car. Person A stated that Respondent put his arm through the slightly opened window, pressed the unlock button to open the door and that Respondent then grabbed his wrists and tried to pull him out of the car. Person A was "struggling with my arm on the bottom of the steering wheel" and Respondent "was just kind of struggling with me for about like three to four minutes" telling him to get out of the car. Person A told Respondent, "Why the f (fuck) are you grabbing me? Get the hell off me!" Person A told Respondent that if he let him go of him he would get out of the car. He got out of the car and was handcuffed by Officer Brito. Person A asked why he had been stopped and he asked if he had been stopped "because I'm black." While he was in front of the police van standing in the rain, Person A saw Respondent "going like through the car and stuff like that."

Person A stated that he heard a woman scream "Why you harassing him?" out of a window on the fifth or sixth floor of a nearby building. He heard Respondent reply, "Shut the F up." Brito shined his flashlight up at the window. Person A told Respondent that "he's stopping me because I'm black and he's racist...and all these other things" including that he was "a punk and everything." Person A told Respondent that he was "weak a whole lot of

times” because Respondent had tried to pull him out of the car. Person A described Respondent as “a rogue cop” who used “excessive force.”

While he was outside the police van, Person A saw Respondent “going through the glove compartment.” Person A was told that “we’re taking you in for disorderly conduct.” He was placed in the van and transported to the precinct. Respondent drove Person A’s car to the precinct and parked it “underneath like a little side garage.” At the precinct, Respondent asked Person A what was wrong with his steering wheel. Brito inventoried Person A’s personal property inside the precinct for about 45 minutes while Respondent “was going through the car.” Person A was served with two summonses, one of which was for disorderly conduct, and was told that he could take his car and leave. When he got into the car, the front of the steering wheel fell out. Person A walked back into the precinct and asked Respondent why he had broken the steering wheel. Respondent replied, “What are you talking about?” Person A called 911 to file a complaint. When Person A was asked if he had been intoxicated during this incident, he responded “Man, I wasn’t, I wasn’t, no. The only intoxication I had was New York City police officer violating me because I was black at three-thirty in the morning in the rain. That was my intoxication.”

Respondent’s Case

Respondent testified in his own behalf.

Respondent

Respondent recalled that soon after receiving the radio transmission that shots had just been fired in the vicinity [REDACTED], which was only blocks away from the intersection of [REDACTED] where the team was patrolling, and that

a car had sped away from the scene of the shooting, he observed Person A abruptly park his car entirely within a designated crosswalk, get out of the car and start to quickly walk away from the car. The officers approached him and asked him where he was going. Person A replied that he was going to a street address that Respondent knew did not exist. As Person A started walking back toward his parked car, Respondent observed that he was holding his hand on his right side pocket which appeared to contain an object. Respondent observed him get back into his car and that he then moved the object from his right pocket to his left pocket. Respondent also noticed him holding onto the car's steering wheel, which was popped and missing an airbag, two characteristics which indicated that the car may have been a stolen car.

Respondent asked Person A to get out of his car. Person A began questioning Respondent. Respondent asked him several more times to get out of the car. Person A refused to comply. Respondent then attempted to open the door and forcibly remove Person A by tugging on his arm. While Respondent tugged on his arm, Person A maintained a tight hold of the steering wheel with both hands. Person A was eventually removed from the car. Because Person A was screaming, several people came out of surrounding buildings while others shouted from their windows down to the street. Person A was handcuffed and transported to the 52 Precinct.

Respondent confirmed that he had performed a limited search of the inside of Person A's car at the scene after Person A was removed from the car and handcuffed. Respondent recalled that he had checked the driver's seat with his hand to insure that there were no needles or knives on the seat before he sat down on it and that he had searched the console area next to the driver's seat.

After Respondent drove the car to the precinct and parked it in the precinct lot, he conducted a second search of the car. He explained that because Person A had claimed the car was a rental car and because the car had two characteristics consistent with being a stolen car, he was required to verify who held legal ownership or legal possession of the car before he could release the car. Although Respondent could not recall all of the areas or compartments he searched, he did recall that he had opened and searched the glove compartment to find the rental agreement document, not to search for contraband. Respondent did not vouch for the car or anything he found inside the car. Respondent stated he intended to return the vehicle to Person A once he verified that he was legally in possession of the car. Respondent issued Person A a summons for parking within a designated crosswalk and a summons for disorderly conduct. Respondent testified that he had arrested Person A for disorderly conduct because he had “created disorder at that corner” which resulted in residents shouting “Fuck the police!” from their windows.

FINDINGS AND ANALYSIS

Specification No. 1

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by searching Person A’s vehicle at the arrest scene without sufficient legal authority. Person A asserted at his CCRB interview, which was offered as hearsay at this trial, that he was able to see Respondent “going like through the car and stuff like that” and that he saw Respondent “going through the glove compartment.” However, it is not disputed that Person A made these asserted observations while he was in front of the police van peering through the windows of his car on a night when it was raining. Since

Person A failed to comply with a subpoena directing him to appear to testify at this trial, Respondent's attorney did not have the opportunity to question him regarding the accuracy of his asserted observations of what Respondent did inside his car and whether his asserted observations were the product of his admitted animus toward the Respondent who he considered to be "a racist," who had only stopped him because he was "black," and "a rogue cop" who used "excessive force."

Respondent testified that the only search of Person A's vehicle that he conducted at the arrest scene was to pat the driver's seating area with his hand, to insure that there were no knives or needles on the driver's seat which could stick him when he sat down on the driver's seat, and the console area next to the driver's seat. This limited search was not unreasonable since Respondent was driving the car to the precinct. This testimony is supported by the undisputed fact that Respondent conducted a search of the glove compartment in the parking lot of the 52 Precinct. If Respondent had conducted a search of the car's glove compartment at the scene, there would have been no reason for him to conduct this subsequent search.

Since I find that Person A's hearsay statement, standing alone, constitutes insufficient evidence to meet CCRB's burden of proof, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by searching Person A's vehicle at the 52 Precinct without sufficient legal authority. Respondent confirmed that after he drove the car to the 52 Precinct, he searched the interior of the car. Although Respondent could not recall all of the areas or compartments he searched, he did recall that he had searched the glove compartment because he

was looking for the rental agreement document to confirm that Person A was in legal possession of the car.

If Respondent had been conducting an inventory search prior to taking Person A car into the custody of the Department, his search of the car's glove compartment would have been proper because an officer who is conducting an inventory search is required to thoroughly search the interior of the vehicle to be inventoried and to search any other area of the vehicle that might contain valuables including the glove compartment.² Here, however, since Person A had been arrested for committing violations, not crimes, and since Respondent testified he intended to return the vehicle to Person A once he verified that he was legally in possession of the car, it is not disputed that at the time Respondent conducted his search of the car, he was not taking the car into Department custody. Thus, Respondent was not conducting an inventory search.

The New York Court of Appeals has held that it is improper for a police officer, incident to an arrest, to search the glove compartment of a rental car unless the officer has a reasonable belief that the glove compartment contains a weapon or evidence related to the specific crime for which the driver was arrested.³ Since Respondent's testimony did not establish that he possessed a reasonable belief that the glove compartment contained a weapon or evidence related to the disorderly conduct charge for which Person A was arrested, his search of the glove compartment was improper.

² Patrol Guide Procedure No. 218-13(1)(a)(1).

³ See discussion of People v. Johnson, 1 NY3d 252 (2003) in Legal Bureau Bulletin, Vol. 35, No. 3 (Aug. 2005).

Therefore, Respondent is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department by searching Person A's car at the 52 Precinct without sufficient legal authority.

The CCRB prosecutor recommended that Respondent's penalty consist of a forfeiture of not less than eight vacation days.

In determining a penalty recommendation, I have taken into consideration Respondent's excellent annual performance evaluations and the fact that he has no formal disciplinary record.

It is recommended that Respondent's penalty consist of a reprimand.

APPROVED

JAN 30 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,



Robert W. Vinal

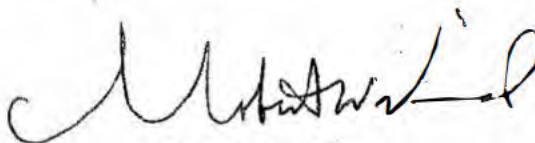
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT BRYAN POALYKO
TAX REGISTRY NO. 935525
DISCIPLINARY CASE NO. 2013-10149

Respondent received an overall rating of 4.5 on his 2013 annual performance evaluation, 4.5 on his 2012 evaluation, and 4.5 on his 2011 ten month probationary sergeant evaluation. He has been awarded one Meritorious Police Duty medal and five Excellent Police Duty medals. [REDACTED] He has no formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials